

ESTTA Tracking number: **ESTTA187108**

Filing date: **01/16/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

### Opposers Information

Name	ParrishHultquist
Granted to Date of previous extension	01/16/2008
Address	6616 North Addison, B-111 Spokane, WA 99208 UNITED STATES

Name	BryanSorenson
Granted to Date of previous extension	01/16/2008
Address	779 East 9400 South, No. 315 Sandy, UT 84094 UNITED STATES

Attorney information	Brett J. Davis Clayton, Howarth & Cannon, P.C. P.O. Box 1909 Sandy, UT 84091 UNITED STATES bdavis@chcpat.com, ttetzi@chcpat.com, docketclerk@chcpat.com Phone:801-255-5335
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### Applicant Information

Application No	77068200	Publication date	09/18/2007
Opposition Filing Date	01/16/2008	Opposition Period Ends	01/16/2008
Applicants	Loren Jay Gough P.O. Box 444 215 North Minnesota Waterville, KS 66548 UNITED STATES  Jackson, Rick 1028 West Dupont Avenue Salt Lake City, UT 84116 UNITED STATES		

### Goods/Services Affected by Opposition

Class 041. First Use: 1986/02/28 First Use In Commerce: 1987/09/01  
All goods and services in the class are opposed, namely: Entertainment in the nature of Musical group; Entertainment namely, live performances by a musical band

## Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	Application was not filed in the true owners names Improper specimen

## Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	MEGATTACK		
Goods/Services	entertainment in the nature of musical group, live performances by a musical band, music, music cds, music sold on the internet		

Attachments	Notice of Opposition.pdf ( 9 pages )(729070 bytes ) Cert of Service-Notice of Opp.pdf ( 2 pages )(119800 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Brett J. Davis/
Name	Brett J. Davis
Date	01/16/2008

GRANT R. CLAYTON (Registration No. 32,462)  
BRETT J. DAVIS (Registration No. 46,655)  
**CLAYTON, HOWARTH & CANNON, P.C.**  
P.O. Box 1909  
Sandy, Utah 84091-1909  
Telephone: (801) 255-5335  
Facsimile: (801) 255-5338

Attorneys for Opposers Bryan Sorenson and Parrish Hultquist

Opposed Mark: MEGATTACK  
U.S. Trademark Application Serial Number: 77/068,200  
Published for Opposition: September 18, 2007

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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BRYAN SORENSON, an individual, and  
PARRISH HULTQUIST, an individual,

Opposers

v.

LOREN J. GOUGH, an individual, and RICK  
JACKSON, an individual,

Applicants.

**NOTICE OF OPPOSITION**

Opposition No. \_\_\_\_\_

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**NOTICE OF OPPOSITION**

As grounds for opposing U.S. Trademark Application Serial No. 77/068,200 (hereinafter  
“the ‘200 Application”), it is alleged that:

## PARTIES

1. Opposer Bryan Sorenson is an individual residing in the State of Utah and Opposer Parish Hultquist is an individual residing in the State of Washington (hereinafter referred to collectively as "Opposers").

2. Upon information and belief, and according to the Trademark Electronic Search System ("TESS") maintained by the Trademark Office, Applicant Loren J. Gough is an individual having an address of P.O. Box 444, 215 North Minnesota, Waterville, Kansas 66457 and Applicant Rick Jackson is an individual having an address of 1028 West Dupont Avenue, Salt Lake City, Utah 84116 (hereinafter collectively referred to as "Applicants").

3. Applicants are the owners of the '200 Application filed on December 20, 2006 for the mark MEGATTACK used in connection with: "Entertainment in the nature of Musical group, live performances by a musical band."

## FACTS

4. In or about the summer of 1985, Opposers formed a hard rock band which they promoted under the trade name MEGATTACK.

5. In or about the fall of 1985, Opposers, after practicing for several months under the trade name MEGATTACK, invited Applicants to participate in the band.

6. In or about the fall of 1985, Applicants agreed to become members of Opposers' band promoted under the trade name MEGATTACK.

7. At no time were Applicants considered owners of the band promoted under the trade name MEGATTACK as Opposers were at all time considered the sole owners of the band as the founding members.

8. During 1986, the Opposers' band promoted under the trade name MEGATTACK played in various live performances.

9. During 1986, the Opposers' band released an album entitled "Raw Delivery" in the United States under the trade name MEGATTACK.

10. In or about the early or mid part of 1987, Applicants left the Opposers' band promoted under the trade name MEGATTACK and formed a new band, THE RAG DOLLS.

11. Upon information and belief, after leaving the Opposers' band, the Applicants did not use the trade name MEGATTACK as they were playing in their new band, THE RAG DOLLS.

12. Upon information and belief, on September 1, 1987, Applicants were not members of any band promoted under the trade name of MEGATTACK.

13. Upon information and belief, on September 1, 1987, Applicants were not using the MEGATTACK mark in commerce.

14. Shortly after Applicants left the band, Opposers reformed the band promoted under the MEGATTACK mark with two new members, Christina Bell and Tracy Swider, along with an original band member, Pat Carter.

15. After the Applicants left the Opposers' band promoted under the trade name MEGATTACK, the Opposers' band performed regularly at many shows under the trade name MEGATTACK.

16. After the Applicants left the Opposers' band promoted under the name MEGATTACK, Opposers continued operating performing under the MEGATTACK mark without the Applicants.

17. In or about July of 2005, the Opposers reformed the band under the trade name MEGATTACK and asked Applicants to rejoin the band, to which they agreed.

18. In or about December of 2005, the Opposers' band released a new album entitled "Save the Nations" in the U.S. under the trade name MEGATTACK.

19. In or about July of 2006, Applicants again left the Opposers' band that used the trade name MEGATTACK.

20. In or about July of 2006, Applicants formed a new band and illegally used the name MEGATTACK to promote their new band, all done despite the protests of Opposers and in violation of Opposers trademark rights to the mark MEGATTACK.

21. On or about December 20, 2006, Applicants filed the '200 Application for the mark MEGATTACK in connection with the goods: "Entertainment in the nature of Musical Group; Entertainment namely, live performances by a musical band."

22. In the first Office Action issued by the Trademark Office for the '200 Application on April 16, 2007, the Trademark Office found that Applicants had not provided a filing basis for the '200 Application and required that the Applicants provide the same.

23. In a response to the first Office Action dated on or about May 24, 2007, the Applicants asserted a filing basis under Trademark Act Section 1(a), 15.U.S.C. § 1051(a) and asserted a date for use in commerce as September 1, 1987 but apparently did not provide a date of first use of the mark.

24. In a second Office Action dated June 13, 2007, the Trademark Office issued a second Office Action requiring that the Applicants provide a date of first use of the mark.

25. In a response to the second Office Action dated on or about August 6, 2007, the Applicants asserted as the date of first use in commerce as September 1, 1987 and the date of use anywhere as January 29, 1986.

26. Upon information and belief, at the time of Applicants' alleged first date of use in commerce, i.e., September 1, 1987, the Applicants were no longer members of the band MEGATTACK and were in fact playing in a new band named THE RAG DOLLS.

27. Upon information and belief, at the time of Applicants' alleged first date of use in commerce, i.e., September 1, 1987, the Opposers were playing with the band MEGATTACK without the Applicants.

28. Applicants are not, and never have been, the owner of the mark MEGATTACK.

29. Opposers have obtained enforceable trademark rights to the mark MEGATTACK.

30. At no time have Opposers transferred the rights to the mark MEGATTACK to the Applicants.

31. Opposers have use of the mark MEGATTACK dating back to at least as early as 1986.

32. Opposers will be damaged if the '200 Application is allowed.

33. Opposers are the senior users of the MEGATTACK mark.

### **FIRST CLAIM FOR RELIEF**

**(The '200 Application Was Not Filed in the True Owners' Names and Is Therefore Void)**

34. Opposers repeat and incorporate by this reference each and every allegation contained in the previous paragraphs of this Notice of Opposition.

35. Pursuant to Section 1(a)(1) of the Trademark Act, 15 U.S.C. §1051(a)(1), an application based on use in commerce must be filed by the true owner of the mark. A §1(a) use based application must include a verified statement that the applicant believes it is the true owner of the mark sought to be registered. 15 U.S.C. §1051(a)(3)(A); 37 C.F.R. §2.33(b)(1). An application that is not filed by the true owner is void.

36. Applicants are not the owner of the MEGATTACK mark.

37. Applicants were not the owner of the MEGATTACK mark at the time of filing the ‘200 Application, and as such, the ‘200 Application filed under § 1(a) is void pursuant to 15 U.S.C. §1051(a)(1).

### **SECOND CLAIM FOR RELIEF**

#### **(Improper Specimen to Establish Use Under Section 1(a) of the Trademark Act – Specimen Does Not Show Use By the Applicants)**

38. Opposers repeat and incorporate by this reference each and every allegation contained in the previous paragraphs of this Notice of Opposition.

39. Upon information and belief, the specimens submitted by the Applicants in support of the ‘200 Application do not show use of the MEGATTACK mark by the Applicants in commerce.

40. Upon information and belief, the specimen submitted by the Applicants demonstrates Opposers’ use of the MEGATTACK mark in commerce.

41. Accordingly, the ‘200 Application should be refused registration because the submitted specimen does not support the use as alleged by the Applicants in commerce.



### **THIRD CLAIM FOR RELIEF**

#### **(The '200 Application is Void for Fraud Committed on the Trademark Office)**

42. Opposers repeat and incorporate by this reference each and every allegation contained in the previous paragraphs of this Notice of Opposition.

43. Upon information and belief, the Applicants have knowingly made false and material representations in connection with the '200 Application.

44. Upon information and belief, the Applicants alleged first date of use in commerce is a false and material misrepresentation of a fact to the Trademark Office since Applicants were no longer with the Opposers' band promoted under the trade name MEGATTACK as of September 1, 1987.

45. Upon information and belief, the Applicants alleged use date in commerce, i.e., February 28, 1986 is a false and material misrepresentation of a fact to the Trademark Office since, at that time, Opposers were the owners of the mark MEGATTACK.

46. Upon information and belief, the Applicants submission of its alleged specimen is a false and material misrepresentation of a fact to the Trademark Office as it shows Opposers' use of the mark MEGATTACK.

47. The '200 Application therefore is void for fraud committed on the Trademark Office by the Applicants.

## **FOURTH CLAIM FOR RELIEF**

### **(Likelihood of Confusion)**

48. Opposers repeat and incorporate by this reference each and every allegation contained in the previous paragraphs of this Notice of Opposition.

49. Opposers have acquired trademark rights to the mark MEGATTACK that predate any use of the MEGATTACK mark by Applicants.

50. Opposers have use of the mark MEGATTACK at least as early as 1986.

51. Registration of the Applicants' MEGATTACK mark in the '200 Application would cause a likelihood of confusion with Opposers' MEGATTACK mark.

52. Applicants' MEGATTACK mark should therefore be refused registration.

### **PRAYER FOR RELIEF**

WHEREFORE, Opposers pray that the registration sought by Applicants in the '200 Application be refused and that this Opposition be sustained in favor of Opposers.

All correspondence and telephonic communications should be directed to:

Grant R. Clayton  
Brett J. Davis  
Attorney Docket No. T11378.2  
CLAYTON, HOWARTH & CANNON, P.C.  
P.O. Box 1909  
Sandy, Utah 84091-1909  
Telephone: (801) 255-5335  
Facsimile: (801) 255-5338

The Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-0836.

DATED this 16<sup>th</sup> day of January, 2008.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Brett J. Davis", written over a horizontal line.

Brett J. Davis

Grant R. Clayton

**CLAYTON, HOWARTH & CANNON, P.C.**

Attorneys for Opposers

Bryan Sorenson and Parrish Hultquist

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Facsimile: (801) 255-5338

Opposition No. \_\_\_\_\_

Pursuant to 37 CFR 2.111(a), I hereby certify that I served a true and correct copy of the NOTICE OF OPPOSITION in the above captioned proceeding by depositing true and correct copies in the U.S. mail, postage prepaid, on this 16<sup>th</sup> day of January, 2008 addressed to:

Loren Jay Gough  
P.O. Box 444  
215 North Minnesota  
Waterville, KANSAS 66548

Rick Jackson  
1028 West Dupont Avenue  
Salt Lake City, UTAH 84116

  
Brett J. Davis

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